

## **REMARKS/ARGUMENTS**

### **Response to Rejection of Claims 46-47 under 35 U.S.C. 112**

The Office has rejected claims 46 and 47 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Office states at paragraph 3: "The recitation 'inspecting an area of....a lower spine region...by accessing the human through an aperture in the support surface' renders the claim indefinite since it is unclear how a person is capable of inspecting the lower spine region himself/herself while positioned on the support surface. Furthermore it is unclear what the meaning of 'by accessing the human through an aperture in the support surface' is."

Applicant respectfully submits that with respect to the 35 U.S.C. 112, second paragraph rejection, respectfully, the Office has not made out the required *prima facie* case of indefiniteness.

A *prima facie* case of indefiniteness is established when the Office shows:

1. interpretation of the claim in light of the specification;
2. interpretation of the claim as one of ordinary skill in the art would interpret it; and
3. that the limitation or (limitations) in the claim does not reasonably define the invention.

*In re Angstadt*, 537 F.2d 498, 190 USPQ 214, 217 (C.C.P.A. 1976) (quoting *In re Moore*, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (C.C.P.A. 1971)). see also "The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description

so that the meaning of the terms in the claims may be ascertainable by reference to the description.”. 37 C.F.R. 1.75(d)(1).

Respectfully, Applicant's pending claims are not indefinite. On the contrary, Applicant's claim language finds clear support in the specification. Applicant has disclosed a support surface for a “mobility impaired person (human).” In various embodiments, a health care worker, health care personnel, etc. interacts with the human to clean, inspect, administer medical services, etc. to the human as taught in several places within the specification, such as, paragraphs [0023], [0024], [0043], [0050], [0052], etc. Application Serial Number 10/602,495.

For example, one of the uses of the support surface is to support a mobility impaired person while providing access to the anal and lower spinal areas of the human. In various embodiments, access to the human is provided to health care workers, health care personnel, etc. as taught in paragraph [0023] as shown below:

[0023] A support surface for a mobility-impaired person (human) is disclosed which eliminates pressure on the coccyx, sacral, and lower back regions of the human's anatomy. Eliminating pressure on these areas of the anatomy mitigates the problems of Decubitus Ulcer formation previously described. The support surface eliminates pressure on the anatomy and allows posterior access to the mobility-impaired person (human) when the human is supported on the support surface. Elimination of pressure and posterior access to the human are provided through an aperture in the support surface. **Access to the anal area of the human facilitates cleaning of the human's anal and lower spinal area following waste discharge by a health care worker without having to move the human.** Application Serial Number 10/602,495, paragraph [0023]. [Emphasis added.]

"inspecting an area of...a lower spine region by accessing the human through an aperture in the support surface," Application Serial Number 10/602,495, claim 46.

is supported by the specification in paragraph [0024]:

[0024] Additionally, inspection of the anal and lower spinal areas of the human are provided through the aperture in the support surface. Inspection of these areas can be performed by **health care providers** or even monitored by the human. In one embodiment, inspection is performed using a mirror positioned to provide a view of the human through the aperture in the support surface. In another embodiment, inspection is performed using a video camera and display. The display can be located in a plurality of places according to various embodiments of the invention. The invention is not limited by the mechanism used to provide a view of the human through the aperture. Application Serial Number 10/602,495, paragraph [0024]. [Emphasis added.]

"inspecting an area of...a lower spine region by accessing the human through an aperture in the support surface," Application Serial Number 10/602,495, claim 46.

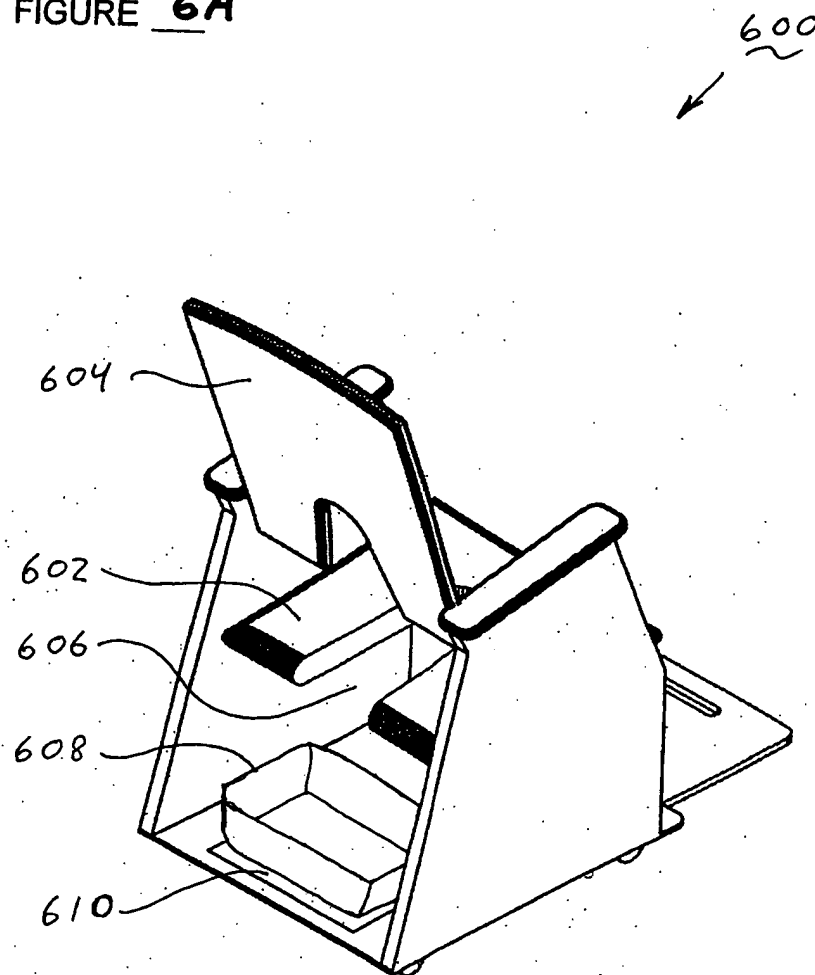
is also supported by the specification in paragraph [0043]:

[0043] **Figure 6A** illustrates a posterior view of one embodiment of the invention. With respect to **figure 6A**, a posterior view of a support surface 600 is shown. A human (not shown) rests on a seat portion 602, thereby positioning his or her anus above an aperture 606 in the seat portion 602. Waste, expelled from the human (not shown), falls into a waste collection pan 608. **Health care providers (not shown) have posterior access to the human and can clean the anal and lower spinal area of the human. The health care worker can inspect the anal and lower spinal regions of the human without moving the human from the support surface 600. Medical services can be administered to the human utilizing the posterior access afforded by the aperture in the support surface 600.** As described with respect to **figure 1, figure 3, figure 4, figure 5, figure 6A, figure 6B, and figure 7**, the composite aperture can include a gap between the seat portion 602 and the back portion 604 as shown in **figure 6A** as desired to provide sufficient access to the human. Application Serial Number 10/602,495, paragraph [0043]. [Emphasis added.]

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Title: SUPPORT APPARATUS FOR A HUMAN AND METHOD OF USE  
Inventor: Darrell James Shelton 206-447-1336  
Docket No.: M5015.P001  
Express Mail No.: ET437832657US  
Filing Date: June 23, 2003  
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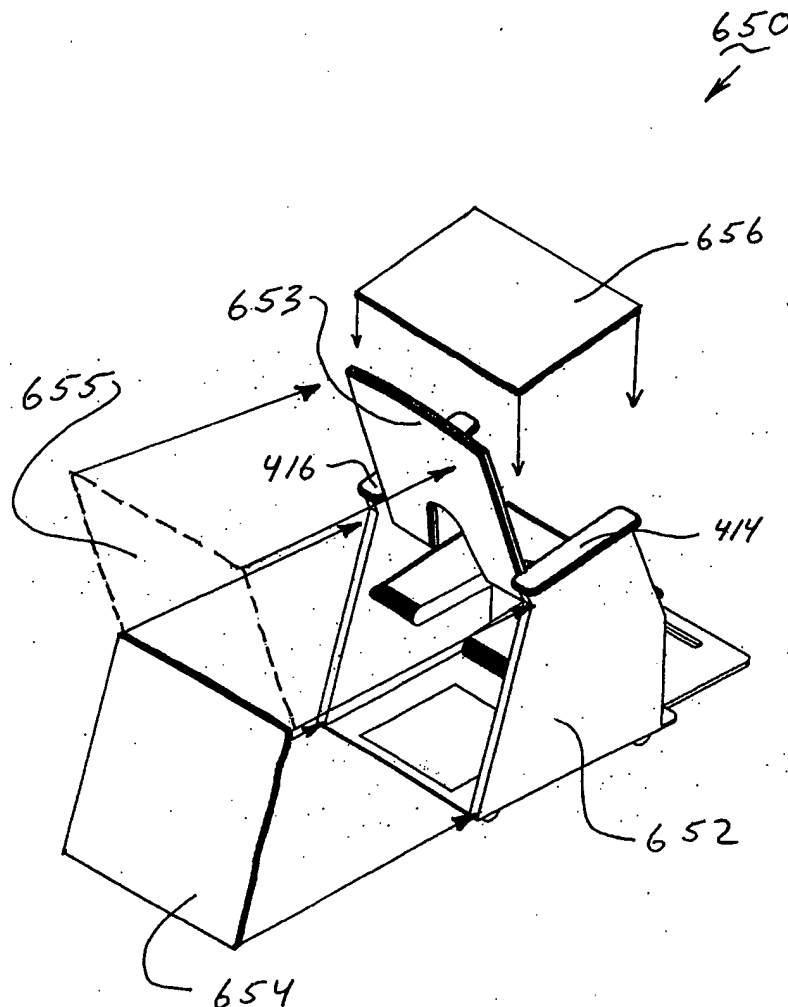
FIGURE 6A



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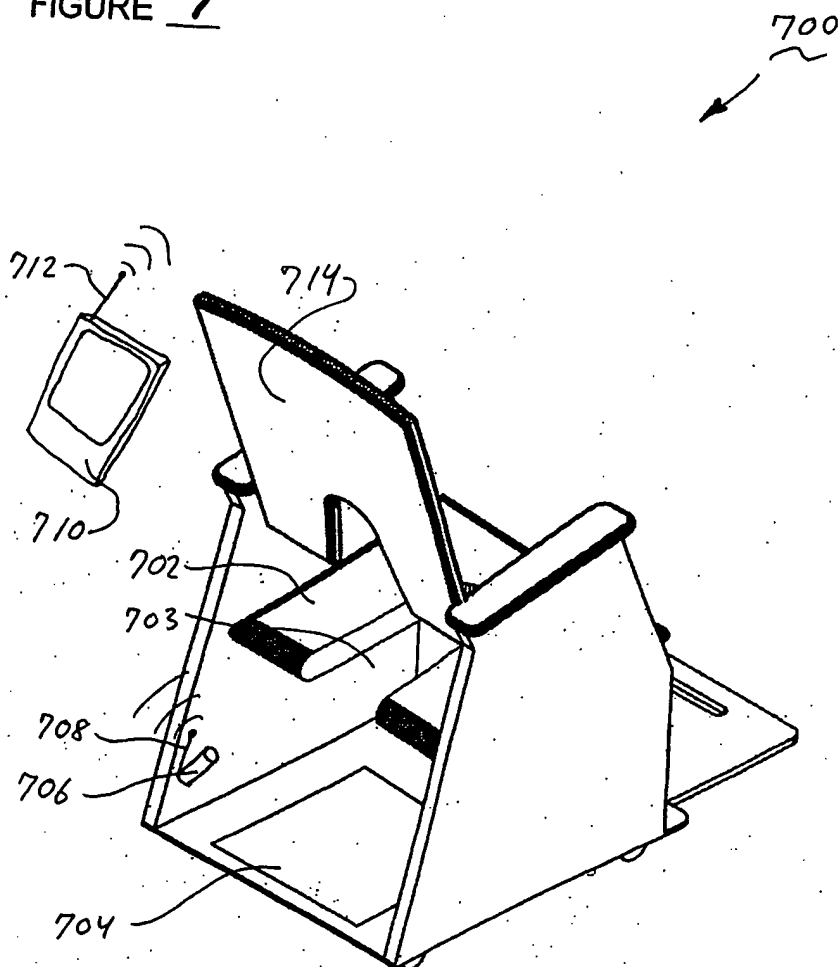
FIGURE **6B**



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FIGURE 7



In various embodiments, the human seated on the support surface can monitor the inspection of his or her anatomy as accessed through the aperture in the support surface, as described in paragraph [0024] below and as depicted in Figures 6A – 7 above.

[0024] Additionally, inspection of the anal and lower spinal areas of the human are provided through the aperture in the support surface. Inspection of these areas can be performed by health care providers or even monitored by the human. In one embodiment, inspection is performed using a mirror positioned to provide a view of the human through the aperture in the support surface. In another embodiment, inspection is performed using a video camera and display. The display can be located in a plurality of places according to various embodiments of the invention. The invention is not limited by the mechanism used to provide a view of the human through the aperture. Application Serial Number 10/602,495, paragraph [0024]. [Emphasis added.]

In various embodiments, health care workers administer medical services to the human as taught in paragraph [0050] and paragraph [0052]:

[0050] The present invention is not limited by the structures utilized to provide a view of the human through the aperture 703. In one embodiment of the invention, multiple views of the human (not shown) seated on the support surface can be produced by different viewing structures and methods. A mirror 704 positioned beneath the aperture 703 can provide a view of the human seated on the support surface and a second view can be provided from the video camera 706 and video display 710. In one embodiment, a health care provider could utilize the mirror 704 when cleaning the human and the view provided by the video camera could be used in a central monitoring facility where a plurality of video displays were arrayed to monitor the status of a plurality of humans; each human seated in a support surface 700 with one or more individual video cameras per human. Multiple video cameras could be used to provide multiple views of patients that were of concern. A video camera could be operated remotely to provide a zoom view of areas of concern on a human. In yet another embodiment, a single

video display 710 could be used to cycle through a plurality of humans seated in individual support surfaces 700. Such an arrangement could be deployed in a health care facility to monitor the health of the plurality of humans. Application Serial Number 10/602,495, paragraph [0050]. [Emphasis added.]

[0052] **Figure 8B** illustrates one embodiment of the invention adapted to a bed capable of being articulated to an elevated position. With respect to **figure 8B**, an elevated support surface is shown at 850. The second portion 802 is elevated making an angle 856 with the first portion 808. The human can be elevated from the reclined position in **figure 8A** to a more seated position in **figure 8B** to facilitate human waste discharge, **cleaning by health care providers, medical examination, and administration of medical services as needed.** The angle 856 is arbitrary, and those of ordinary skill in the art will recognize that such an embodiment can be configured in a general manner allowing for general positioning of the first portion 808 and the second portion 802, in much the same way that hospital beds are adjusted. Application Serial Number 10/602,495, paragraph [0052]. [Emphasis added.]

#### **Response to Rejection of Claims 45-47 under 35 U.S.C. 102(b)**

The Office has rejected claims 45-47 under 35 U.S.C. 102(b) as being anticipated by Wilk (5551098):

“Regarding claim 45, the Wilk reference discloses a device (Fig. 5) that cleans an anal region of a person. The device includes a support surface (at 42) supporting the person, and an aperture (about 68 in figure 5) that allows the accessing of the anal region to clean it.

Regarding claim 46, the Wilk reference discloses a device (Fig. 5) that allows a person to medically treat him or herself with afflictions such as hemorrhoids and cystitis. The device includes a support surface (at 42) supporting a person; and an aperture (about 68 in figure 5) that allows the accessing of the anal region to clean it and, inherently, the visual inspection of the anal region during the cleaning and after the cleaning to make sure that the anal region is indeed cleaned.



Regarding claim 47, as stated above, the Wilk device is known to be used to treat afflictions such as hemorrhoids and cystitis, thus when the device is used, medical services are inherently administering to the person, in the forms of cleaning, douching, irrigating using disinfectant agents (col. 2, lines 60-65), through the aperture in the support surface." Office action dated 11/16/2004, paragraph 5.

The Office has rejected claim 45 under 35 U.S.C. 102(b) as being anticipated by Tanaka et al. (5201080).

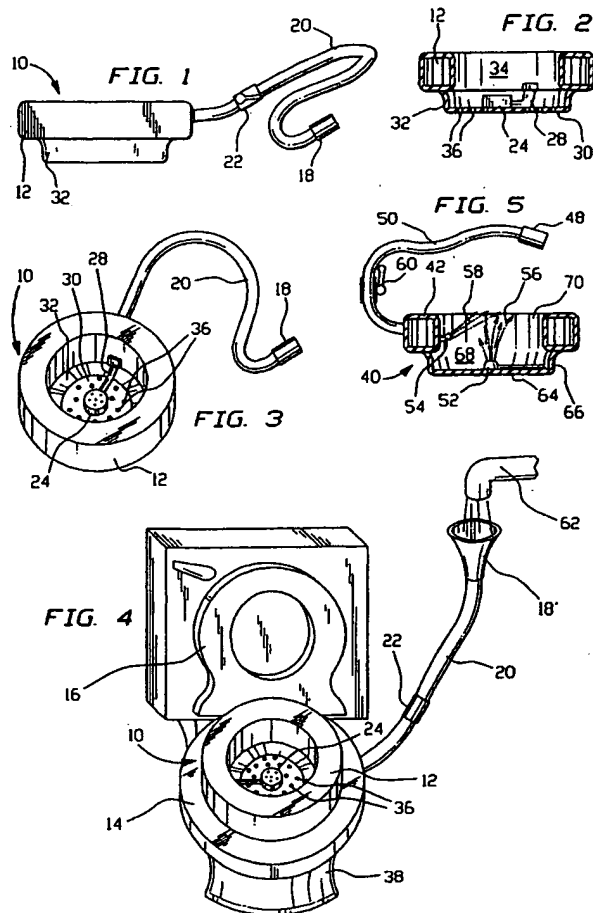
"The Tanaka et al. reference discloses a device (Fig 1) that cleans an anal region of a person. The device includes a support surface (at 2) supporting the person, and an aperture (the opening formed in element 2) that allows the accessing of the anal region to clean it." Office action dated 11/16/2004, paragraph 6.

With respect to the 35 U.S.C. 102 (b) rejections, respectfully, the Office has not made out the required *prima facie* case of anticipation with either the Wilk or Tanaka et al. reference.

A *prima facie* case of anticipation is established when the Office provides:

1. a single prior art reference
2. teaches or enables
3. each of the claimed elements (arranged as in the claim)
4. expressly or inherently
5. as interpreted by one of ordinary skill in the art.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)., Scripps Clinic & Research Found. V. Genentech Inc., 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991). MPEP 2131. "The identical invention must be shown in as complete detail as is contained in the...claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).



With respect to the Wilk reference, the Wilk reference does not teach every element of Applicant's claims 45-47. Specifically, the Wilk reference does not teach or enable, either expressly or impliedly, an "aperture" as the Applicant

does in Applicant's claims 45-47. Wilk's aperture (about 68 in Figure 5) does not provide a health care worker posterior access to the anal region of the human supported on the support surface. As taught by the Applicant in the paragraphs above, the Applicant has disclosed a support surface for a "mobility impaired person (human)." In various embodiments, a health care worker, health care personnel, etc. interacts with the human to clean, inspect, administer medical services, etc. as taught in several places within the specification, such as, paragraphs [0023], [0024], [0043], [0050], [0052], etc. Application Serial Number 10/602,495. Wilk teaches a "personal bidet and associated method." When a person sits on the "personal bidet device" (10 Figure 1, 40 Figure 5, 72 Figure 6, etc. Wilk) the person's anatomy covers cavity or recess (34 Figure 2, 68 Figure 5), which the Office has analogized to Applicant's "aperture," thereby preventing access to the person's anal region by a health care worker.

Applicant's "aperture" relieves pressure from the human's coccyx, sacral, and lower back regions of the human's anatomy and provides access to the human's anal region, the Wilk reference does not:

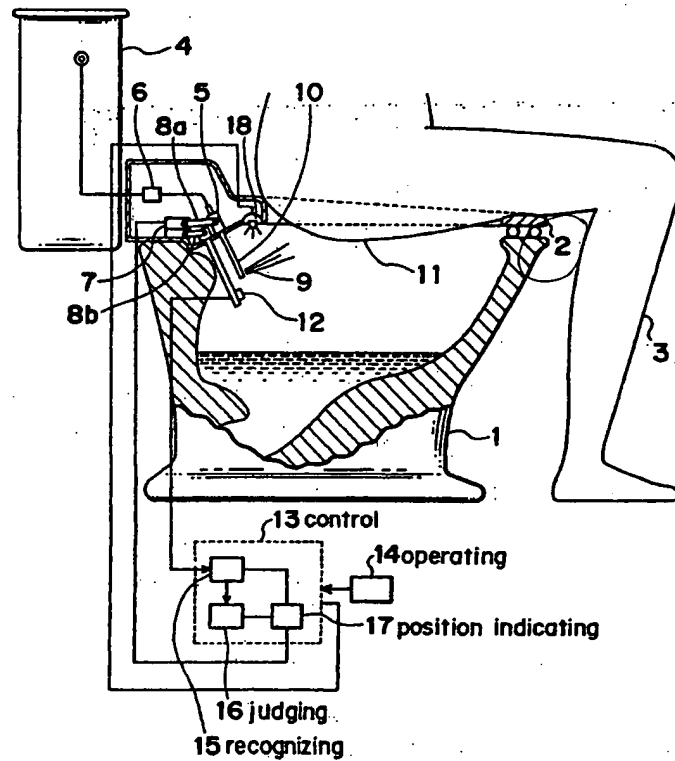
[0023]        **A support surface for a mobility-impaired person (human) is disclosed which eliminates pressure on the coccyx, sacral, and lower back regions of the human's anatomy. Eliminating pressure on these areas of the anatomy mitigates the problems of Decubitus Ulcer formation previously described. The support surface eliminates pressure on the anatomy and allows posterior access to the mobility-impaired person (human) when the human is supported on the support surface. Elimination of pressure and posterior access to the human are provided through an aperture in the support surface. Access to the anal area of the human facilitates cleaning of the human's anal and lower spinal area following waste discharge by a health care worker**

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without having to move the human. Application Serial Number 10/602,495, paragraph [0023].

With regard to Applicant's claim 46, The Wilk reference does not teach a device that permits a human seated on the device to be inspected by either himself or herself or by another. **When a person sits on the Wilk device inspection is not possible.** Further, Wilk teaches a "personal bidet" and there is no teaching or discussion in Wilk regarding using another person for inspecting or administering medical services.

*Fig. 1*



The device taught by Tanaka et al. is another toilet bowl style of device, similar to Wilk, that does not provide the functionality taught by the Applicant.

Tanaka et al. teaches that "reference numerals 1 and 2 represent a toilet and a seat for a user 3. Tanaka et al., column 3, lines 14-15. With respect to Tanaka et al., there is no aperture through which a health care worker can access the human's anal area for cleaning; neither can this area be inspected (by either a health care worker or the human) through the opening in the top of Tanaka et al.'s toilet. Additionally, the opening formed in the toilet seat (2 in Figure 1) of Tanaka et al.'s device does not eliminate pressure on the coccyx, sacral, or lower back regions of the person's anatomy when the person sits on the toilet seat (2 in Figure 1 Tanaka et al.).

None of the art cited by the Office teaches a support surface having an "aperture" as the Applicant has taught. For example, Tanaka et al.'s element 2 is described therein as a toilet seat. Tanaka et al.'s toilet seat does not contain an aperture that relieves pressure on the sacral portion of the human's anatomy nor does Tanaka's toilet seat provide posterior access to the human seated thereon. Tanaka, figure 2.

#### **Response to Rejection of Claims 46-47 under 35 U.S.C. 103(a)**

The Office has rejected claims 46-47 under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al. (5201080) in view of Tsipov (5513396).

Applicant respectfully points out that according to the MPEP §2142, "to establish a *prima facie* case of obviousness, three basic criteria must be met:

- 1<sup>st</sup> there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one

of ordinary skill in the art, to modify the references or to combine reference teachings;

- 2<sup>nd</sup> there must be a reasonable expectation of success;
- 3<sup>rd</sup> the prior art reference (or references when combined) must teach or suggest all of the claim limitations.”

These criteria have not been met by the Office's rejection of Applicant's claims 46-47.

The cited references cannot render Applicant's invention obvious because the references do not teach or suggest all of the Applicant's claim limitations (see the arguments above relating to the rejections under 35 U.S.C. 102(a)).

Specifically, **the references do not teach posterior access through an aperture in a support surface.** All of the cited references are directed to toilet style devices that do not provide the functionality of the Applicant's invention.

Specifically, the cited references do not teach:

- “inspecting a lower spinal region of the human's anatomy by posterior access of the human provided through an aperture in the support surface.” Application Serial Number 10/602,495, claim 46.
- or
- “administering medical services to the human through the aperture in the support surface.” Application Serial Number 10/602,495, claim 47.

As discussed above, the art of record does not teach or suggest an aperture with the functionality that applicant's aperture possesses. For example, Applicant's aperture provides access to the lower back region of the human's

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anatomy. The openings in the toilet seats shown in the art of record do not provide such access to the human. Therefore, the Office has failed to make out the required *prima facie* case of obviousness required to sustain a §103(a) rejection.

### CONCLUSION

Applicant has canceled claims 1-44. Applicant has amended claims 45 and 46 and has addressed the Office's rejections of the pending claims and has provided new claims, 48-71, for examination. Applicant submits that all pending claims are in condition for allowance and requests the allowance of all the pending claims in the application.

Respectfully submitted,

PELOQUIN, PLLC

January 29, 2005  
Date

Mark S. Peloquin, Esq.  
Mark S. Peloquin, Esq.

USPTO Registration # 50,787

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January 29, 2005  
Date